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Sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 79th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 April 1991, at 10 a.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.79/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Algeria (CAT/C/9/Add.5)

1. At the invitation of the Chairman, Mr. Semichi, Mr. Bouzertini, Mrs. Semichi and Mr. Khodja (Algeria) took places at the Committee table.

2. Mr. SEMICHI (Algeria) said that the initial report (CAT/C/9/Add.5) described the reform process which his country had undertaken. By way of additional information, he drew attention to the adoption in March 1990 of an act which represented a decisive step towards the legislative elections that would be held on 27 June 1991 and mark the beginning of the multi-party system in Algeria. His delegation was prepared to reply to all of the Committee's questions.

3. Mr. DIPANDA MOUELLE (Country Rapporteur) congratulated the Algerian delegation on the quality of its country's report and welcomed the fact that the Algerian Government had begun to bring its legislation into line with the democratic aspirations of society. With regard to the form of the report, he regretted, however, that, in the first part, too much attention had been given to statements by politicians and to events with no direct bearing on the implementation of the Convention.

4. Paragraph 7 (h) indicated that the judiciary regulations had been revised. What were the main features of that reform? In what way did the new regulations differ from the previous ones? The same questions arose with regard to the reorganization of the Supreme Court (para. 7 (i)). Furthermore, while the establishment of the National Committee against Torture (para. 9) was, of course, a welcome initiative, it would be interesting to know the composition of the Committee as well as its sources of financing.

5. According to paragraph 23, the Constitutional Council was composed of seven members, two appointed by the President of the Republic, two elected by the National People's Assembly and two elected by the Supreme Court from among its members. He would like to know how the seventh member was appointed or elected.

6. He noted with great interest in paragraph 29 of the report that article 139 of the Constitution protected judges against all forms of pressure. It would be useful to know exactly what measures were being taken to ensure such protection.

7. He asked what the main features of the judicial system in Algeria (para. 31) were. How were judges trained? How were they appointed or removed? At what age did they retire and what sanctions could be imposed on them?

8. He welcomed the liberal spirit of Act No. 90-23 of 18 August 1990 (para. 43), which had abolished the requirement that all prior remedies, whether discretionary or hierarchical, should be exhausted and made it an obligation for the judge to attempt to reconcile the parties. He would like

to know, specifically, how such reconciliation was effected. In a conflict between individuals and Government authorities, was it not likely that such reconciliation would be arbitrary?

9. It was not clear from paragraphs 45 and 46 that torture had been specifically defined in Algerian legislation. If "treaties duly ratified by Algeria form an integral part of the country's domestic law and may be invoked before its courts" (para. 46), how was the crime of torture prevented and punished? What were the rules relating to the interrogation of persons under arrest? Did detainees have the right to refer to the prison or judicial authorities in the event of ill-treatment? What were the main aspects of the Act governing prison administration in Algeria?

10. Referring to article 33, paragraph 2, of the Convention relating to the Status of Refugees, he noted that the Convention against Torture contained no similar provision in respect of refoulement or extradition and asked whether Algerian legislation was in conformity with the provisions of article 3 of the latter instrument. Did foreign nationals, in particular, benefit from additional guarantees in respect of expulsion?

11. With regard to article 4 of the Convention, the report listed a number of offences punishable by law. However, they were all limited to direct acts of violence or assault. Did the law also provide for acts of non-physical violence? He noted that the Committee was once again faced with the problem of the lack of a definition of torture in Algerian legislation. It would be useful to know the number of victims of cases of torture and to have information on a few judicial decisions.

12. With respect to the application of article 5, it did not seem that the principle of the establishment of a universal jurisdiction was observed in practice. What was the position with regard to a foreigner found guilty of committing acts of torture against an Algerian national outside Algerian territory?

13. It would be desirable to have some detailed information on the "strict rules" governing the flagrante delicto procedure (para. 70). Was the "bail" which a foreigner was required to provide in order to obtain pre-trial release similar to the security for compliance with judgement in force in some countries?

14. He would welcome additional information on the implementation of article 7 of the Convention in internal law. With regard to article 8, he asked whether extradition was subject to the existence of an agreement and whether the political reasons that might constitute an obstacle to extradition were also taken into account in the case of the crime of torture. As to article 10, he would like to know what training was provided for judicial, medical and prison personnel.

15. In connection with article 11, he asked for information on the duration of pre-trial detention, police custody and, where applicable, solitary confinement. He wished to know how prisons were monitored by the judicial authorities and welcomed the fact that the representatives of humanitarian organizations were authorized to visit prisons.

16. Referring to article 12 of the Convention, he asked whether there had been any investigations into acts of torture in Algeria. Without wishing to

violate the secrecy of pre-trial proceedings, he would be interested to know how many and what kind of allegations of ill-treatment had been made in the Blida prison case (para. 101). Did cases of that kind occur elsewhere as well? It would be useful if the Algerian Government could inform the Committee in due course of the judicial findings in those cases. Were prison guards armed? What instructions had they received to deal with rioting or mass escapes?

17. With regard to article 14 of the Convention, could the State be directly implicated by the victim where an act of torture had been committed by one of its agents? To obtain redress, could the victim invoke the criminal responsibility of the agent before a criminal court or the responsibility of the State before an administrative court? If so, did foreigners benefit from the same system?

18. Lastly, referring to article 15, he asked whether there had been cases where statements made under duress had been ruled out by the courts and whether that practice was automatically followed, in accordance with the Convention.

19. Ms. CHANET (Alternate Country Rapporteur) said that she agreed with the general comments Mr. Dipanda Mouelle had made on the first part of the report of Algeria. With regard to the decision of the Algerian Constitutional Council on the legal precedence of treaties over the law, she asked how Algerian legislation could avoid adopting specific acts giving effect to treaties.

20. As to article 2 of the Convention, she asked whether the legislation relating to the state of exception was in the process of being amended. According to paragraph 3 of that article, "An order from a superior officer or a public authority may not be invoked as a justification of torture". Was that the case in Algerian positive law?

21. Noting that article 6 of the Covention did not relate exclusively to the applicable law in respect of detention, she asked whether, in the extradition procedure applicable in Algeria, there were any temporary custody measures allowing the detention of the person in question in accordance with the requirements of article 6.

22. Expressing regret, like Mr. Dipanda Mouelle, that the report did not specify how long police custody could last and noting that, according to paragraph 7 (c) of the report, the State Security Court had been abolished, she asked whether the duration of police custody and pre-trial detention was the same in every possible case and whether the abolition of the court of special jurisdiction had led to a return to ordinary law in that field.

23. Mr. BURNS said that Algeria had established a remarkable system of protection and stressed, by way of example, that a released prisoner was able to be examined by a physician and that even solitary confinement did not restrict the right of the accused to communicate with his counsel.

24. He would welcome information on the structure of the police administration and the role of the armed forces in the maintenance of order. Could the army be given exceptional powers? In what circumstances could a state of emergency be proclaimed? To what extent did the state of emergency

suspend the right to communicate with counsel or to have access to medical treatment? Referring to article 293 of the Penal Code (para. 58), he expressed surprise at the severity of the punishment provided for where it was established that the crime of torture had been committed, questioning, however, whether the death penalty was not in itself a cruel and inhuman punishment. It should be pointed out that the Algerian Penal Code did not mention non-physical torture, which was nevertheless provided for by the Convention.

25. Mr. SORENSEN congratulated the Algerian delegation on its country's very comprehensive report. Since medical personnel played a key role in the field of torture, he would like to know whether there were special training programmes for forensic physicians or specialized training in problems of torture. He would also welcome further information on the type of redress obtained by victims of acts of torture or cruel treatment and stressed the fact that such redress should include moral rehabilitation, financial compensation and medical treatment. Persons who had been subjected to severe acts of torture frequently suffered from after-effects which warranted medical treatment. Were there rehabilitation centres for torture victims in Algeria?

26. Mr. KHITRIN associated himself with the comments of other members of the Committee and said that he would also like to have specific information on the activities of the National Committee against Torture. When had it been established? What were its functions? What questions did it consider? Had complaints of torture been referred to it?

27. With respect to the application of article 45 of the Algerian Constitution, he would like to know who could extend police custody and in what conditions. With regard to the implementation of article 4 of the Convention, he asked whether persons who committed crimes through negligence were liable to the death penalty, the number of times the death penalty had been handed down on a yearly average and the number of convicted persons who had actually been executed.

28. Mr. MIKHAILOV, commending the Algerian delegation on the detailed and comprehensive nature of the report under consideration, which made it possible to raise important substantive questions, said that he agreed with the comments made by Mr. Dipanda Mouelle, the Country Rapporteur, and Ms. Chanet, the Alternate Country Rapporteur. He noted, however, that the report did not clearly show how domestic legislation was applied in respect of torture or how the Convention was implemented in internal law. Furthermore, no statistics were given on acts of torture or cruel, inhuman or degrading treatment. While the report was critical of previous legislation and announced reforms, nothing was said about the responsibility of administrative and judicial bodies.

29. With regard to more specific issues, he requested clarifications on paragraph 7 (c) of the report, which indicated that pending cases before emergency courts had been referred to the courts which would normally have jurisdiction. What had been the competence of the emergency courts? Had they handed down sentences that had violated the rights of individuals? Were those sentences valid at the present time? As to paragraph 7 (d), according to which the economic division of the criminal court had been abolished, it would be interesting to know whether illegal sentences in respect of torture had been handed down by the economic division.

30. He did not understand the meaning of the amnesty for "crimes and offences against persons and property committed with the use of force during or on the occasion of riots or violent gatherings, for certain places" referred to in paragraph 7 (1) of the report; had the victims of those crimes and offences received compensation? Noting also that a draft text revising the lawyers' regulations was currently under review by the National People's Assembly (para. 8), he would like to know the main provisions of the new lawyers' regulations with regard to torture.

31. Article 46 of the 1989 Algerian Constitution provided that "Any miscarriage of justice shall give rise to compensation by the State. The terms and conditions of compensation shall be determined by law". What was meant by miscarriage of justice? How did the law determine that the victims of a miscarriage of justice had the possibility of receiving compensation from the State? Was there in practice a mechanism that made it possible to obtain compensation?

32. With regard to article 123 of the Algerian Constitution, under which "treaties ratified by the President of the Republic, under the conditions specified by the Constitution, take precedence over the law", he asked what the nature of that precedence was. He also wished to know how the provision that "... everyone is presumed to know the law", as stated in article 57 of the Constitution, was applied from the standpoint of the violation of the rights of the individual and, in particular, acts of torture. Noting that, according to article 9 of the Constitution, "the judge is forbidden to join any political association. A judge shall notify the Minister of Justice of his membership in any other associations or groups" (para. 31), he asked whether that provision did not restrict the rights of judges. A distinction had to be made between the exercise of a political activity and membership of a political association or other associations. How was that provision of the Constitution applied in practice?

33. Ms. DIAZ PALACIOS said that, like the other members of the Committee, she welcomed the quality of the report submitted by Algeria. With regard to paragraph 51 of the report concerning prison administration, she would like to know whether Algeria, like many other countries, had a problem of prison overcrowding and whether, where necessary, that problem was solved by the introduction of open or semi-open prison systems.

34. She shared the concern expressed by Mr. Burns with regard to paragraph 58 of the report stating that "Acts of torture constitute a capital offence punishable by the death penalty." She was personally opposed to the death penalty, considering that it was not a solution and that more rational means could be found to punish the most horrible crimes.

35. She had particularly appreciated paragraphs 88 to 91 of the report relating to the implementation of article 10 of the Convention. While it was essential that training on the prohibition against torture should be given to the officials concerned, it was equally necessary to make society as a whole aware of the problems of torture and cruel treatment. In that connection, the mass media had a major role to play. Her experience in the area of communications had shown her how important it was to limit the presentation of acts of violence in the media. It had been estimated that, by 14 years of age, an adolescent had seen an average of 8,000 crimes on television.

Excessive dissemination of violence had no cathartic effect, as some claimed, but, on the contrary, destroyed the moral principles which the family and teachers tried to instil in children.

36. As to the application of article 14 of the Convention (paras. 104 and 105), she would like to know whether there had been any claims for redress and compensation by victims of torture and, if so, in what form such redress and compensation had been provided.

37. She noted with interest that Algerian legislation included a wide range of new humanitarian standards and requested the Algerian delegation to be good enough to transmit to the Committee all possible legal documentation together with the text of the relevant provisions.

38. Mr. PERLAS said that he appreciated the quality of the report under consideration and would like to know, with regard to the fourth paragraph on page 23, whether the duration of solitary confinement in closed régimes could really be for as long as three years in the case of persons sentenced to life imprisonment. He also wished to know whether the provisions relating to punishment for acts of torture concerned related only to acts of physical torture or whether account was also taken of psychological torture.

39. The CHAIRMAN, speaking as a member of the Committee, thanked the Algerian delegation for its high quality report, which was structured in accordance with the Committee's guidelines and contained exhaustive information from the legislative and institutional standpoints. Like Mr. Burns, he had been impressed by the range of guarantees provided for by law. Algeria had a comprehensive and modern set of legislative provisions which, it was to be hoped, was being put into effect.

40. He nevertheless wished to ask a few questions, some of which had already been raised by other members of the Committee. First of all, he would like to know how article 3 of the Convention was being implemented; according to paragraphs 53 to 56 of the report, the Algerian Constitution and the Penal Code concerned only extradition rather than refoulement or expulsion and did not seem to make provision for the danger of being subjected to torture as a reason for refusing extradition. Of course, Algeria was a party to the Convention relating to the Status of Refugees as well as to the Convention Governing Specific Aspects of the Problem of Refugees in Africa, but those instruments related only to refugees and asylum-seekers, whereas article 3 of the Convention was much broader in coverage. He would like to know whether that apparent gap in Algerian legislation was being filled through the direct implementation of article 3 of the Convention. Amnesty International had indicated that, at the outset of the Gulf war, some Moroccan soldiers who had taken refuge in Algeria had been returned to Morocco, even though they had claimed that they might be subject to torture if they were. Was it possible to know why their allegations had not been taken into account?

41. Furthermore, of all the articles of the Penal Code cited, it was difficult to see clearly which ones dealt with torture and cruel treatment. For example, articles 291 to 293 bis of the Penal Code concerned cases of torture, but did not seem to deal with acts of torture by Government officials. He would therefore like to know how a case of torture within the meaning of the Convention was punished. Had there already been cases of torture, investigations and sentences? Had cases of torture taken place in

Blida prison? In that connection, mention had been made of eight torturers of whom three had reportedly been tried. Had any sentences been handed down? The Algerian Government should provide information on that point in the periodic report it was to submit in 1993.

42. With regard to the implementation of article 6 of the Convention (para. 74 in fine), he would like to know whether the Algerian delegation could confirm that the prohibition to communicate imposed on the suspect related only to the prohibition to communicate with his family and in no case to his counsel.

43. It would be useful to know whether there had been claims for redress for acts of torture and, if so, how many. As to the implementation of article 15 of the Convention, he feared that the provisions of articles 212 and 213 of the Civil Code, under which the judge evaluated the confession as an element of proof "in accordance with his innermost conviction", were inadequate; according to the Convention against Torture, no statement made under torture could be regarded as evidence, whatever the conviction of the judge. How was article 15 implemented? Was it implemented directly in the absence of specific provisions?

44. Mr. SEMICHI (Algeria) thanked the members of the Committee for their questions, which would enable his delegation to demonstrate its willingness to cooperate.

45. The Algerian delegation withdrew.

The public meeting rose at 11.30 a.m.